

CHAPTER 53—INDIANS

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AMENDMENTS

1996—Pub. L. 104-294, title VI, § 604(b)(26), Oct. 11, 1996, 110 Stat. 3508, directed that item 1169 be transferred to appear after item 1168.

Pub. L. 104-294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508, amended directory language of Pub. L. 103-322, § 330011(d), which amended Pub. L. 101-630, § 404(a)(2). See 1990 Amendment note below.

1994—Pub. L. 103-322, title XXXIII, § 330010(5), Sept. 13, 1994, 108 Stat. 2143, substituted “Illegal trafficking in Native American human remains and cultural items” for “Illegal Trafficking in Native American Human Remains and Cultural Items” in item 1170.

1990—Pub. L. 101-647, title XXXV, § 3536, Nov. 29, 1990, 104 Stat. 4925, struck out item 1157 “Livestock sold or removed”.

Pub. L. 101-644, title I, § 104(b), Nov. 29, 1990, 104 Stat. 4663, substituted “Misrepresentation of Indian produced goods and products” for “Misrepresentation in sale of products” in item 1159.

Pub. L. 101-630, title IV, § 404(a)(2), Nov. 28, 1990, 104 Stat. 4548, as amended, effective on the date section 404(a)(2) of Pub. L. 101-630 took effect, by Pub. L. 103-322, title XXXIII, § 330011(d), Sept. 13, 1994, 108 Stat. 2144, as amended by Pub. L. 104-294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508, added item 1169.

Pub. L. 101-601, § 4(b), Nov. 16, 1990, 104 Stat. 3052, added item 1170.

1988—Pub. L. 100-497, § 24, Oct. 17, 1988, 102 Stat. 2488, added items 1166, 1167, and 1168.

1960—Pub. L. 86-634, § 3, July 12, 1960, 74 Stat. 469, added items 1164 and 1165.

1956—Act Aug. 1, 1956, ch. 822, § 1, 70 Stat. 792, added item 1163.

1953—Act Aug. 15, 1953, ch. 502, § 1, 67 Stat. 586, added item 1161.

Act Aug. 15, 1953, ch. 505, § 1, 67 Stat. 588, added item 1162.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 25 section 450h.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the

jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, § 25, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 548 and 549 of title 18, and sections 212, 213, 215, 217, 218 of title 25, Indians, U.S. Code, 1940 ed. (R.S. §§ 2142, 2143, 2144, 2145, 2146; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

This section consolidates numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

R.S. §§ 2145, 2146 (U.S.C., title 25, §§ 217, 218) extended to the Indian country with notable exceptions the criminal laws of the United States applicable to places within the exclusive jurisdiction of the United States. Crimes of Indians against Indians, and crimes punishable by tribal law were excluded.

The confusion was not lessened by the cases of *U.S. v. McBratney*, 104 U.S. 622 and *Draper v. U.S.*, 17 S.Ct. 107, holding that crimes in Indian country by persons not Indians are not cognizable by Federal courts in absence of reservation or cession of exclusive jurisdiction applicable to places within the exclusive jurisdiction of the United States. Because of numerous statutes applicable only to Indians and prescribing punishment for crimes committed by Indians against Indians, “Indian country” was defined but once. (See act June 30, 1834, ch. 161, § 1, 4, Stat. 729, which was later repealed.)

Definition is based on latest construction of the term by the United States Supreme Court in *U.S. v. McGowan*, 58 S.Ct. 286, 302 U.S. 535, following *U.S. v. Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly v. U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty v. U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser’s note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase “except as otherwise provided in sections 1154 and 1156 of this title”, incorporates in this section the limitations of the term “Indian country” which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

AMENDMENTS

1949—Act May 24, 1949, incorporated the limitations of term “Indian country” which are contained in sections 1154 and 1156 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-297, § 1, May 29, 1976, 90 Stat. 585, provided: “That this Act [amending sections 113, 1153, and 3242 of this title] may be cited as the ‘Indian Crimes Act of 1976’.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1164, 1460, 2252, 2252A, 2266, 3559, 3598, 5032 of this title; title 15 sections 632, 1175, 1243, 1245; title 16 sections 3371, 3377; title 25

sections 1616e-1, 1777d, 1903, 2801, 3202, 3653, 4302; title 28 section 1738B; title 33 sections 1377, 2269; title 42 sections 608, 654, 3796gg-2, 10101; title 49 section 40128.

§ 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(June 25, 1948, ch. 645, 62 Stat. 757.)

HISTORICAL AND REVISION NOTES

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser's note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C., 1940 ed.

Minor changes were made in translations and phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1162, 3598, 4042, 5032 of this title; title 25 sections 1725, 2442, 2802.

§ 1153. Offenses committed within Indian country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, §26, 63 Stat. 94; Pub. L. 89-707, §1, Nov. 2, 1966, 80 Stat. 1100; Pub. L. 90-284, title V, §501, Apr. 11, 1968, 82 Stat. 80; Pub. L. 94-297, §2, May 29, 1976, 90 Stat. 585; Pub. L. 98-473, title II, §1009, Oct. 12, 1984, 98 Stat. 2141; Pub. L. 99-303, May 15, 1986, 100 Stat. 438; Pub. L. 99-646, §87(c)(5), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99-654, §3(a)(5), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100-690, title

VII, §7027, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103-322, title XVII, §170201(e), title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2043, 2150.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§548, 549 (Mar. 4, 1909, ch. 321, §§328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

Section consolidates said sections 548 and 549 of title 18, U.S.C., 1940 ed. Section 548 of said title covered 10 crimes. Section 549 of said title covered the same except robbery and incest.

The 1932 amendment of section 548 of title 18, U.S.C., 1940 ed., constituting the last paragraph of the section, is omitted and section 549 of said title to which it applied likewise is omitted. The revised section therefore suffices to cover prosecution of the specific offenses committed on all reservations as intended by Congress.

Words "Indian country" were substituted for language relating to jurisdiction extending to reservations and rights-of-way, in view of definitive section 1151 of this title.

Paul W. Hyatt, president, board of commissioners, Idaho State Bar, recommended that said section 548 be considered with other sections in title 25, Indians, U.S.C., 1940 ed., and revised to insure certainty as to questions of jurisdiction, and punishment on conviction. Insofar as the recommendation came within the scope of this revision, it was followed.

The proviso in said section 548 of title 18, U.S.C., 1940 ed., which provided that rape should be defined in accordance with the laws of the State in which the offense was committed, was changed to include burglary so as to clarify the punishment for that offense.

Venue provisions of said section 548 of title 18, U.S.C., 1940 ed., are incorporated in section 3242 of this title.

Section 549 of title 18, U.S.C., 1940 ed., conferred special jurisdiction on the United States District Court for South Dakota of all crimes of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny committed within the limits of any Indian reservation within the State, whether by or against Indians or non-Indians. The Act of February 2, 1903, 32 Stat. 793, from which said section 549 was derived, accepted the cession by South Dakota of such jurisdiction.

The effect of revised sections 1151, 1152, and 1153 of this title is to deprive the United States District Court for the District of South Dakota of jurisdiction of offenses on Indian reservations committed by non-Indians against non-Indians and to restore such jurisdiction to the courts of the State of South Dakota as in other States. This reflects the views of the United States attorney, George Philip, of the district of South Dakota.

Minor changes were made in translation and phraseology.

1949 ACT

This section [section 26] removes an ambiguity in section 1153 of title 18, U.S.C., by eliminating the provision that the crime of rape in the Indian country is to be punished in accordance with the law of the State where the offense was committed, leaving the definition of the offense to be determined by State law, but providing that punishment of rape of an Indian by an Indian is to be by imprisonment at the discretion of the court. The offense of rape, other than rape of an Indian by an Indian within the Indian country, is covered by section 2031 of title 18, U.S.C., and the offense of burglary by sections 1152 and 3242 of such title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 substituted "kidnaping" for "kidnaping" and inserted "(as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years" after "serious bodily injury".

1988—Subsec. (a). Pub. L. 100-690 substituted “maiming, a felony under chapter 109A, incest” for “‘maiming’ and all that follows through ‘incest’”, thus clarifying execution of amendment by Pub. L. 99-646 and Pub. L. 99-654 but resulting in no change in text. See 1986 Amendment note below.

1986—Pub. L. 99-646 and Pub. L. 99-654 which directed that section be amended identically by substituting in first par. “a felony under chapter 109A,” for “rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape,” and by striking out in second and third pars. “, involuntary sodomy,” was executed by making the substitution in subsec. (a) for “rape, involuntary sodomy, felonious sexual molestation of a minor, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape,” to reflect the probable intent of Congress in view of prior amendment of this section by Pub. L. 99-303, but amendment to second and third pars. could not be executed because such pars. were struck out by Pub. L. 99-303.

Pub. L. 99-303 inserted section catchline which had been eliminated by general amendment by section 1009 of Pub. L. 98-473, designated first par. as subsec. (a) and inserted “felonious sexual molestation of a minor,”, struck out second par. which provided that, as used in this section, the offenses of burglary, involuntary sodomy, and incest be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense, and struck out third par. and restated the provisions thereof in a new subsec. (b), substituting “Any offense referred to in subsection (a) of this section that is” for “In addition to the offenses of burglary, involuntary sodomy, and incest, any other of the above offenses which are”.

1984—Pub. L. 98-473 amended section generally, inserting offenses of maiming, involuntary sodomy and a felony committed under section 661 of this title and striking out reference to larceny in first par., and inserting “, involuntary sodomy,” after “burglary” in third par.

1976—Pub. L. 94-297 made changes in phraseology, added offense of kidnapping to the enumerated list of offenses subjecting any Indian to the same laws and penalties as all other persons, struck out applicability to assault with a dangerous weapon and assault resulting in serious bodily injury from paragraph covering the offenses of burglary and incest only, and substituted paragraph, relating to offenses in addition to offenses of burglary and incest, for paragraph relating to offenses of rape and assault with intent to commit rape.

1968—Pub. L. 90-284 inserted offense of assault resulting in serious bodily injury.

1966—Pub. L. 89-707 inserted offenses of carnal knowledge and assault with intent to commit rape, defined and proscribed the punishment for assault with intent to commit rape in accordance with the laws of the State in which the offense was committed, and required assault with a dangerous weapon and incest to be defined and punished in accordance with the laws of the State in which the offense was committed.

1949—Act May 24, 1949, struck out provision that the crime of rape is to be punished in accordance with the law of the State where the offense was committed and in lieu inserted provision leaving punishment up to the discretion of the court.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99-646 and Pub. L. 99-654 effective, respectively, 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99-646 and section 4 of Pub. L. 99-654, set out as an Effective Date note under section 2241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1162, 3242, 3551, 3598, 4042, 5032 of this title; title 25 sections 1301, 1725, 1775d, 2802; title 42 section 14135a.

§ 1154. Intoxicants dispensed in Indian country

(a) Whoever sells, gives away, disposes of, exchanges, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

(b) It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the Department of the Army or any officer duly authorized thereunto by the Department of the Army, but this subsection shall not bar the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who barter, donates, or furnishes in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

(c) The term “Indian country” as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, §27, 63 Stat. 94; Pub. L. 103-322, title XXXIII, §330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 241, 242, 244a, 249, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. §2139; Feb. 27, 1877, ch. 69, §1, 19 Stat. 244; July 4, 1884, ch. 180, §1, 23 Stat. 94; July 23, 1892, ch. 234, 27 Stat. 260; Mar. 2, 1917, ch. 146, §17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, §1, 52 Stat. 696).

Section consolidates sections 241, 242, 244a, and 249 of title 25, U.S.C., 1940 ed., Indians. The portion of section 241 of said title which defined the substantive offense became subsection (a); the portion relating to the scope of the term “Indian country” was omitted as unnecessary in view of definition of “Indian country” in section 1151 of this title; the portion of section 241 of said title excepting liquors introduced by the War Department became subsection (c), as limited by section 249 of

said title; the portion respecting making complaint in county of offense, and with reference to arraignment, was omitted as covered by rule 5 of the Federal Rules of Criminal Procedure; and the remainder of section 241 of said title was incorporated in section 1156 of this title.

Section 254 of title 25, U.S.C., 1940 ed., Indians, was omitted as covered by this section and section 1156 of this title. That section was enacted in 1934 and excluded from the Indian liquor laws lands outside reservations where the land was no longer held by Indians under a trust patent or a deed or patent containing restrictions against alienation. Such enactment was prior to the June 15, 1938, amendment of section 241 of title 25, U.S.C., 1940 ed., Indians, in which the term "Indian country" was defined as including allotments where the title was held in trust by the Government or where it was inalienable without the consent of the United States. This provision, by implication, excluded cases where there was no trust or restriction on alienation and thereby achieved the same result as section 254 of title 25, U.S.C., 1940 ed., Indians. That amendment also repealed the act of Jan. 30, 1897, referred to in section 254 of title 25, U.S.C., 1940 ed., Indians. Insofar as the reference in section 254 of said title to "special Indian liquor laws" included section 244 of title 25, U.S.C., 1940 ed., Indians, the definition of Indian country in section 1151 of this title covers section 254 of title 25, U.S.C., 1940 ed., Indians.

Words "or agent" were deleted as there have been no Indian agents since 1908. See section 64 of title 25, U.S.C., 1940 ed., Indians, and note thereunder.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for non-payment of fine was deleted. This change was also recommended by United States District Judge T. Blake Kennedy on the ground that, otherwise, section would be practically meaningless since, in most cases, offenders cannot pay a fine.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 ACT

Subsection (a) of this section [section 27(a)] substitutes "Department of the Army" for "War Department", in subsection (b) of section 1154 of title 18, U.S.C., to conform to such redesignation by act July 26, 1947 (ch. 343, title 11, §205(a), 61 Stat. 501 (5 U.S.C., 1946 ed., §181-1)). Subsection (b) of this section [section 27(b)] adds subsection (c) to such section 1154 in order to conform it and section 1156 more closely to the laws relating to intoxicating liquor in the Indian country as they have heretofore been construed.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$500" after "first offense, be" and for "fined not more than \$2,000" after "subsequent offense, be".

1949—Subsec. (b). Act May 24, 1949, §27(a), substituted "Department of the Army" for "War Department".

Subsec. (c). Act May 24, 1949, §27(b), added subsec. (c).

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Interior and functions of all agencies and employees of such Department, with two exceptions, transferred to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1161, 3113 of this title; title 25 section 1725.

§ 1155. Intoxicants dispensed on school site

Whoever, on any tract of land in the former Indian country upon which is located any Indian school maintained by or under the supervision of the United States, manufactures, sells, gives away, or in any manner, or by any means furnishes to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, whether medicated or not, or who carries, or in any manner has carried, into such area any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into such area any of such liquors or drinks, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 758; Pub. L. 103-322, title XXXIII, §330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 241a, 244a, of title 25, U.S.C., 1940 ed., Indians (Mar. 1, 1895, ch. 145, §8, 28 Stat. 697; Mar. 5, 1934, ch. 43, 48 Stat. 396.)

Section consolidates sections 241a and 244a of title 25, U.S.C., 1940 ed., Indians. The effect of section 244a of said title in repealing section 241a of said title, except as to lands upon which Indian schools are maintained, was to continue prohibiting the dispensing of liquor in such areas.

The words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

The minimum punishment provision was omitted to conform to the policy adopted in revision of the 1909 Criminal Code.

Mandatory punishment provision was rephrased in the alternative.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$500".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1156. Intoxicants possessed unlawfully

Whoever, except for scientific, sacramental, medicinal or mechanical purposes, possesses intoxicating liquors in the Indian country or where the introduction is prohibited by treaty or an Act of Congress, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 759; May 24, 1949, ch. 139, §28, 63 Stat. 94; Pub. L. 103-322, title

XXXIII, § 330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 241, 244, 244a, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. 2139; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 23, 1892, ch. 234, 27 Stat. 260; May 25, 1918, ch. 86, § 1, 40 Stat. 563; June 30, 1919, ch. 4, § 1, 41 Stat. 4; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, § 1, 52 Stat. 696).

The revision of section 244 of title 25, U.S.C., 1940 ed., Indians, conforms with the effect thereon of sections 241, 244a, and 254 of said title.

The provisions relating to scope of term “Indian country” were omitted as unnecessary in view of definition of “Indian country” in section 1151 of this title.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for non-payment of fine was deleted. Such change was also recommended by United States District Judge T. Blake Kennedy. (See reviser’s note under section 1154 of this title.)

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 28] adds to section 1156 of title 18, U.S.C., a paragraph to conform this section and section 1154 of such title more closely to the laws relating to intoxicating liquors in the Indian country as they have been heretofore construed.

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$500” after “first offense, be” and for “fined not more than \$2,000” after “subsequent offense, be” in first par.

1949—Act May 24, 1949, inserted last par.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1161, 3113 of this title; title 25 section 1725.

[§ 1157. Repealed. Pub. L. 85-86, July 10, 1957, 71 Stat. 277]

Section, acts June 25, 1948, ch. 645, 62 Stat. 759; May 24, 1949, ch. 139, § 29, 63 Stat. 94; Aug. 15, 1953, ch. 506, § 2(a), 67 Stat. 590, prohibited purchase of Indian-owned livestock subject to unpaid loans from Federal revolving fund or from tribal loan funds.

§ 1158. Counterfeiting Indian Arts and Crafts Board trade mark

Whoever counterfeits or colorably imitates any Government trade mark used or devised by the Indian Arts and Crafts Board in the Department of the Interior as provided in section 305a of Title 25, or, except as authorized by the Board, affixes any such Government trade mark, or knowingly, willfully, and corruptly affixes any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products; or

Whoever knowingly makes any false statement for the purpose of obtaining the use of any such Government trade mark—

Shall (1) in the case of a first violation, if an individual, be fined under this title or impris-

oned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000; and (3) shall be enjoined from further carrying on the act or acts complained of.

(June 25, 1948, ch. 645, 62 Stat. 759; Pub. L. 101-644, title I, § 106, Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-322, title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on section 305d of title 25, U.S.C., 1940 ed., Indians (Aug. 27, 1935, ch. 748, § 5, 49 Stat. 892).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of misdemeanor in section 1 of this title.

The words “upon conviction thereof” were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Maximum fine was changed from \$2,000 to \$500 to bring the offense within the category of petty offenses defined by section 1 of this title. (See reviser’s note under section 1157 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$250,000” in third par.

1990—Pub. L. 101-644, in third par., added cls. (1) and (2), struck out “be fined not more than \$500 or imprisoned not more than six months, or both; and” after “Shall”, and designated remaining provision at end as cl. (3).

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Interior and functions of all agencies and employees of such Department, with two exceptions, transferred to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950 §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1159. Misrepresentation of Indian produced goods and products

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

(b) Whoever knowingly violates subsection (a) shall—

(1) in the case of a first violation, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and

(2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000.

(c) As used in this section—

(1) the term “Indian” means any individual who is a member of an Indian tribe, or for the

purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

(3) the term “Indian tribe” means—

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

(4) the term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

(June 25, 1948, ch. 645, 62 Stat. 759; Pub. L. 101-644, title I, §104(a), Nov. 29, 1990, 104 Stat. 4663.)

HISTORICAL AND REVISION NOTES

Based on section 305e of title 25, U.S.C., 1940 ed., Indians (Aug. 27, 1935, ch. 748, §6, 49 Stat. 893).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of misdemeanor in section 1 of this title.

The last paragraph of section 305e of title 25, U.S.C., 1940 ed., relating to duty of district attorney to prosecute violations of such section, will be incorporated in title 28, U.S. Code.

Maximum fine of \$2,000 was changed to \$500 to bring the offense within the category of petty offenses defined by section 1 of this title. (See reviser’s note under section 1157 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1990—Pub. L. 101-644 substituted “Misrepresentation of Indian produced goods and products” for “Misrepresentation in sale of products” in section catchline and amended text generally. Prior to amendment, text read as follows: “Whoever willfully offers or displays for sale any goods, with or without any Government trade mark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States or the Territory of Alaska, when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be fined not more than \$500 or imprisoned not more than six months, or both.”

CERTIFICATION OF INDIAN ARTISANS

For purposes of this section, an Indian tribe may not impose fee to certify individual as Indian artisan, with “Indian tribe” having same meaning as in subsec. (c)(3) of this section, see section 107 of Pub. L. 101-644, set out as a note under section 305e of Title 25, Indians.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set

out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 305d.

§ 1160. Property damaged in committing offense

Whenever a non-Indian, in the commission of an offense within the Indian country takes, injures or destroys the property of any friendly Indian the judgment of conviction shall include a sentence that the defendant pay to the Indian owner a sum equal to twice the just value of the property so taken, injured, or destroyed.

If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

(June 25, 1948, ch. 645, 62 Stat. 759; Pub. L. 103-322, title XXXIII, §330004(9), Sept. 13, 1994, 108 Stat. 2141.)

HISTORICAL AND REVISION NOTES

Based on sections 227, 228 of title 25, U.S.C., 1940 ed., Indians (R.S. 2154, 2155).

Section consolidates said sections 227 and 228 of title 25, U.S.C., 1940 ed., Indians, with such changes in phraseology as were necessary to effect consolidation.

The phrase “or whose person was injured,” which followed the words “friendly Indian to whom the property may belong,” was deleted as meaningless.

AMENDMENTS

1994—Pub. L. 103-322 substituted “non-Indian” for “white person” in first par.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1161. Application of Indian liquor laws

The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

(Added Aug. 15, 1953, ch. 502, §2, 67 Stat. 586; amended Pub. L. 98-473, title II, §223(b), Oct. 12, 1984, 98 Stat. 2028.)

AMENDMENTS

1984—Pub. L. 98-473 substituted “3669” for “3618”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1)

of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

| <i>State or Territory of</i> | <i>Indian country affected</i> |
|------------------------------|--|
| Alaska | All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended. |
| California | All Indian country within the State. |
| Minnesota | All Indian country within the State, except the Red Lake Reservation. |
| Nebraska | All Indian country within the State. |
| Oregon | All Indian country within the State, except the Warm Springs Reservation. |
| Wisconsin | All Indian country within the State. |

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, ch. 505, § 2, 67 Stat. 588; amended Aug. 24, 1954, ch. 910, § 1, 68 Stat. 795; Pub. L. 85-615, § 1, Aug. 8, 1958, 72 Stat. 545; Pub. L. 91-523, §§ 1, 2, Nov. 25, 1970, 84 Stat. 1358.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-523, § 1, substituted provisions relating to the jurisdiction of the State of Alaska over offenses by or against Indians in the Indian country, and certain excepted areas, for provisions relating to the jurisdiction of the Territory of Alaska over offenses by or against Indians in the Indian country.

Subsec. (c). Pub. L. 91-523, § 2, inserted “as areas over which the several States have exclusive jurisdiction” after “subsection (a) of this section”.

1958—Subsec. (a). Pub. L. 85-615 gave Alaska jurisdiction over offenses committed by or against Indians in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 566e, 711e, 713f, 714e, 715d, 1300b-15, 1300f, 1300i-1, 1323, 1747, 1772d, 1918, 2433.

§ 1163. Embezzlement and theft from Indian tribal organizations

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of \$1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

As used in this section, the term “Indian tribal organization” means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

(Added Aug. 1, 1956, ch. 822, § 2, 70 Stat. 792; amended Pub. L. 103-322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

AMENDMENTS

1996—Pub. L. 104-294 substituted “\$1,000” for “\$100” in third par.

1994—Pub. L. 103-322, in third par., substituted “fined under this title” for “fined not more than \$5,000” after “Shall be” and for “fined not more than \$1,000” after “he shall be”.

§ 1164. Destroying boundary and warning signs

Whoever willfully destroys, defaces, or removes any sign erected by an Indian tribe, or a

Government agency (1) to indicate the boundary of an Indian reservation or of any Indian country as defined in section 1151 of this title or (2) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall be fined under this title or imprisoned not more than six months, or both.

(Added Pub. L. 86-634, §1, July 12, 1960, 74 Stat. 469; amended Pub. L. 103-322, title XXXIII, §330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$250”.

§ 1165. Hunting, trapping, or fishing on Indian land

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined under this title or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(Added Pub. L. 86-634, §2, July 12, 1960, 74 Stat. 469; amended Pub. L. 103-322, title XXXIII, §330016(1)(D), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$200”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1166. Gambling in Indian country

(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

(b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(c) For the purpose of this section, the term “gambling” does not include—

- (1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or
- (2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect.

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

(Added Pub. L. 100-497, §23, Oct. 17, 1988, 102 Stat. 2487.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (c), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, which enacted sections 1166 to 1168 of this title and chapter 25 (§2701 et seq.) of Title 25, Indians. Section 11(d)(8) of such Act is classified to section 2710(d)(8) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 25 and Tables.

§ 1167. Theft from gaming establishments on Indian lands

(a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value of \$1,000 or less belonging to an establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title or be imprisoned for not more than one year, or both.

(b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of \$1,000 belonging to a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title, or imprisoned for not more than ten years, or both.

(Added Pub. L. 100-497, §23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 103-322, title XXXIII, §330016(1)(S), (U), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, §330016(1)(S), substituted “fined under this title” for “fined not more than \$100,000”.

Subsec. (b). Pub. L. 103-322, §330016(1)(U), substituted “fined under this title” for “fined not more than \$250,000”.

§ 1168. Theft by officers or employees of gaming establishments on Indian lands

(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of \$1,000 or less shall be fined not more than \$250,000 or imprisoned not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment op-

erated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of \$1,000 shall be fined not more than \$1,000,000 or imprisoned for not more than twenty years, or both.

(Added Pub. L. 100-497, § 23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 101-647, title XXXV, § 3537, Nov. 29, 1990, 104 Stat. 4925.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647 substituted “or imprisoned” for “and be imprisoned for”.

§ 1169. Reporting of child abuse

(a) Any person who—

(1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

(2) knows, or has reasonable suspicion, that—

(A) a child was abused in Indian country, or

(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined under this title or imprisoned for not more than 6 months or both.

(b) Any person who—

(1) supervises, or has authority over, a person described in subsection (a)(1), and

(2) inhibits or prevents that person from making the report described in subsection (a), shall be fined under this title or imprisoned for not more than 6 months or both.

(c) For purposes of this section, the term—

(1) “abuse” includes—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(2) “child” means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) “local child protective services agency” means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

(4) “local law enforcement agency” means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

(Added Pub. L. 101-630, title IV, § 404(a)(1), Nov. 28, 1990, 104 Stat. 4547; amended Pub. L. 103-322, title XXXIII, §§ 330011(d), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2144, 2147; Pub. L. 104-294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508.)

AMENDMENTS

1996—Pub. L. 104-294 amended directory language of Pub. L. 103-322, § 330011(d). See 1994 Amendment note below.

1994—Pub. L. 103-322, § 330011(d), as amended by Pub. L. 104-294, amended directory language of Pub. L. 101-630, § 404(a)(1), which enacted this section.

Subsecs. (a), (b). Pub. L. 103-322, § 330016(1)(K), substituted “fined under this title” for “fined not more than \$5,000” in concluding provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(d) of Pub. L. 103-322, as amended by Pub. L. 104-294, § 604(b)(25), provided that the amendment made by that section is effective on the date section 404(a) of Pub. L. 101-630 took effect.

§ 1170. Illegal trafficking in Native American human remains and cultural items

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accord-

ance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 101-601, §4(a), Nov. 16, 1990, 104 Stat. 3052; amended Pub. L. 103-322, title XXXIII, §330010(4), Sept. 13, 1994, 108 Stat. 2143.)

REFERENCES IN TEXT

The Native American Graves Protection and Repatriation Act, referred to in text, is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

AMENDMENTS

1994—Pub. L. 103-322 substituted “Illegal trafficking in Native American human remains and cultural items” for “Illegal Trafficking in Native American Human Remains and Cultural Items” in section catchline.

CHAPTER 55—KIDNAPPING

| Sec. | |
|-------|------------------------------------|
| 1201. | Kidnapping. |
| 1202. | Ransom money. |
| 1203. | Hostage taking. |
| 1204. | International parental kidnapping. |

AMENDMENTS

1994—Pub. L. 103-322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150, which directed the amendment of this title by “striking ‘kidnaping’ each place it appears and inserting ‘kidnapping’”, was executed by substituting “KIDNAPPING” for “KIDNAPING” in chapter heading and “Kidnapping” for “Kidnaping” in item 1201, to reflect the probable intent of Congress.

1993—Pub. L. 103-173, §2(c), Dec. 2, 1993, 107 Stat. 1999, added item 1204.

1984—Pub. L. 98-473, title II, §2002(b), Oct. 12, 1984, 98 Stat. 2186, added item 1203.

1972—Pub. L. 92-539, title II, §202, Oct. 24, 1972, 86 Stat. 1072, substituted “Kidnaping” for “Transportation” in item 1201.

§ 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary if the person was alive when the transportation began;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the

United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties,

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported to interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(g) SPECIAL RULE FOR CERTAIN OFFENSES INVOLVING CHILDREN.—

(1) TO WHOM APPLICABLE.—If—

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender—

(i) has attained such age; and

(ii) is not—

(I) a parent;

(II) a grandparent;